

	Link to Final Agency Decision
	OAH Docket No. 7-1800-19329-2

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary
Immediate Suspension of the Family
Child Care License of Ranetta Kinney

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Richard C. Luis (ALJ) at the Hennepin County Health Services Building, 525 Portland Avenue, Minneapolis, Minnesota, on December 6, 2007. The hearing record closed on December 6, 2007, at the conclusion of the hearing.

Michael Q. Lynch, Assistant Hennepin County Attorney, 525 Portland Avenue, Suite 1210, Minneapolis, MN 55415 appeared on behalf of Hennepin County Human Services Department ("Local Agency") and the Minnesota Department of Human Services ("Department"). The Licensee, Ranetta Kinney, 8245 Stevens Avenue South, Bloomington, MN 55420-2010, appeared her own behalf.

STATEMENT OF ISSUE

Whether the Local Agency and the Department demonstrated reasonable cause to believe that the temporary immediate suspension of Ms. Kinney's license should be upheld because the Licensee's failure to comply with capacity limits and age ratios, using unapproved equipment for infants, using unapproved space in the home for daycare purposes, allowing children access to hazardous materials, failing to use gates when toddlers were in care, and failing to obtain necessary paperwork for children in care poses an imminent risk of harm to the safety or rights of the children served by her program?

The ALJ concludes that an imminent risk of harm to the safety or rights of the children served by the Licensee's daycare has been demonstrated.

Based on all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Ranetta Kinney has been licensed to provide daycare from her home at 8245 Stevens Avenue South in Bloomington since July 31, 2007.¹ She is licensed to care for up to 10 children, of whom only six may be under school age and up to three may be infants and toddlers. No more than two infants may be in the daycare.²

2. As part of the licensing process, Ms. Kinney's home was inspected for compliance with daycare standards. Joe Berg, the Bloomington Fire Inspector, noted that a main floor bedroom had insufficient window egress for use as a daycare area. The Licensee told Berg that the finished basement area would not be used for daycare, so that area was not included in the inspection. Berg approved the home for daycare use, excluding the bedroom, basement, and garage.³

3. Hennepin County Child Protection Services (CPS) received a report of child abuse by two adults, D.D. and J.L.G., who worked in the Licensee's daycare.⁴ CPS investigated the report and informed the Local Agency of the allegation. A CPS worker and a police officer interviewed D.D. and J.L.G. at the Licensee's daycare on October 22, 2007. During the interview, the daycare children were all in the basement. CPS reported these observations to the Local Agency.⁵

4. On October 25, 2007, Hennepin County Child Care Licensors Katie Diaz came to the Licensee's premises at 8245 Stevens Avenue South in Bloomington. The visit was unannounced and made to investigate the information received regarding the daycare. J.L.G. answered the door and the Licensee was present. The Licensee indicated that she was unaware that background studies were needed for D.D. and J.L.G. Diaz provided the forms needed to obtain the background studies.

5. While at the daycare, Diaz observed that eight children were in care. Four of those children were preschoolers, and of the remaining four, three were infants and one was a toddler. The Licensee told Diaz that there was another infant, not present that day, who was in care part-time. Diaz noted that the basement was used for childcare, no gate was in place to prevent access to the basement stairs, and hazardous materials (uncovered trash, air freshener

¹ Exhibit 6.

² *Id.*; Minn. Rules 9502.0365, subp. 1 and 9502.0367 A.

³ Exhibits 5 and 6.

⁴ The record is not clear on where the reported abuse was alleged to have taken place or who was allegedly abused.

⁵ Exhibit 7.

pellets, and cough and cold medicine) were within reach of daycare children. An infant was sleeping in a swing.⁶

6. Diaz advised the Licensee that she was not in compliance with the age ratios and that infants could not be allowed to sleep in swings.⁷ Diaz prepared a Correction Order that specified the violations that had been observed and required that the violations be corrected.⁸ The Correction Order was mailed to the Licensee on October 26, 2007.⁹

7. Due to the seriousness of the observed violations, Diaz consulted with the Hennepin County Attorney's Office as to whether a temporary immediate suspension should be sought. The conclusion was reached that an immediate suspension would not be sought so long as the Licensee removed D.D. and J.L.G. from her daycare and made the other corrections necessary. An unannounced follow-up visit was recommended to ensure that the needed corrections had been made.¹⁰

8. Tim Hennessey, Senior Social Worker for the Local Agency, also went to the Licensee's daycare on October 25, 2007. Hennessey had received a telephone call from Diaz while she was at the Licensee's daycare due to the seriousness of the observed violations.¹¹ He also observed the violations that Diaz noted regarding the Licensee's daycare.¹²

9. The Local Agency subsequently received a report that the Licensee was still using the basement for care and that too many children were enrolled.¹³

10. On October 30, 2007, Diaz made an unannounced follow-up visit to the Licensee's daycare premises. The Licensee was present and no adult helper was in attendance. Diaz observed that twelve children were in care, one infant sleeping in the front room and the remaining eleven in the basement, where all lights were off. One infant was asleep in a swing in the basement and another was strapped into a high chair, awake but not being fed. Diaz counted three cots, one toddler bed, and three portable cribs as available sleeping equipment. The gate and hazardous materials violations had not been corrected (trash and bottles of shampoo were accessible by daycare children). Diaz noted that the Licensee had one daycare child with no paperwork on file and two daycare children with incomplete paperwork. Several electrical outlets were not properly

⁶ *Id.*

⁷ Testimony of Hennessey.

⁸ Exhibit 8.

⁹ Exhibit 9.

¹⁰ Exhibit 7.

¹¹ Testimony of Diaz.

¹² Testimony of Hennessey.

¹³ Testimony of Diaz.

covered. At one point during the visit, the Licensee was attempting to calm two infants by holding them at the same time.¹⁴

11. Based on her observations, Diaz determined that the same violations found on the October 25 inspection had appeared again during the October 30 inspection. Diaz recommended negative action be taken against the Licensee for the violations. After consultation with senior licensing staff at the Local Agency and the County Attorney's Office, the Local Agency recommended that a temporary immediate suspension be issued.¹⁵ The numbers and ratio of children in care led the Local Agency to believe that the Licensee could not possibly care for the children that she was bringing into the daycare. This situation creates a risk of harm through the inability of the Licensee to provide needed care.¹⁶ The Local Agency recommendation was transmitted to the Department on October 30, 2007.¹⁷

12. On October 31, 2007, the Department issued an Order of Temporary Immediate Suspension to the Licensee, due to a finding that the health, safety, and rights of children in her daycare were at imminent risk of harm. The Order prohibited the Licensee from operating her daycare until the Order was reversed.¹⁸

13. On November 5, 2007, the Licensee filed an appeal of the temporary immediate suspension. The Department issued a Notice of and Order for Hearing (Order) on November 5, 2007. The Order set this matter on for hearing before the undersigned ALJ on December 6, 2007.¹⁹

14. On November 7, 2007, the Licensee returned the Correction Order issued on October 26, 2007, to the Local Agency. The Licensee noted on the Correction Order that she had corrected all of the citations, no later than November 1, 2007. Specifically she indicated that she had reduced her capacity to six children, with one toddler and two infants. She indicated that she had installed a gate and no longer used the basement as of October 29, 2007.²⁰

¹⁴ Exhibit 10; Testimony of Diaz.

¹⁵ Exhibit 2.

¹⁶ Testimony of Hennessey.

¹⁷ Exhibit 4.

¹⁸ Exhibit 3.

¹⁹ Notice of and Order for Hearing.

²⁰ Exhibit 11.

Based on the Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 245A.07, subd. 2.

2. The Notice of Hearing was proper, and the Department has fulfilled all relevant procedural requirements.

3. Any of the Findings properly termed Conclusions are adopted as such.

4. The Local Agency and the Department have established reasonable cause to believe that the Licensee failed to comply with the capacity and ratio limits regarding children in her care.

5. The Local Agency and the Department have established reasonable cause to believe that an imminent risk of harm to the health, safety or rights of persons served by Ms. Kinney's program exists due to her failure to comply with applicable capacity and ratio limits established by rule and described in the Findings above.

6. It is appropriate to continue the temporary immediate suspension of the Family Child Care License of Ranetta Kinney, pending the resolution of any disciplinary action against the license, because Ms. Kinney's repeated failure to adhere to the ratio and capacity limits poses an imminent risk to the safety or rights of the children served by her program. An imminent risk of harm is also posed within the meaning of Minn. Stat. § 245A.07 because the daycare is using unapproved space and improper and inadequate sleeping equipment.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Temporary Immediate Suspension of the Family Child Care License of Ranetta Kinney be CONTINUED, pending the final resolution of any disciplinary action taken against the license.

Dated this 17th day of December, 2007

s/Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped, One Tape, No Transcript Prepared.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner. Parties should contact the office of Cal Ludeman, Commissioner, Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0998, to find out how to file exceptions. The Commissioner must issue his final order within 10 working days from the end of the exception period.

Pursuant to Minn. Stat. § 14.62, subd. 1 (2004), the Commissioner is required to serve his final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The record establishes that the Licensee was over capacity and out of ratio on two occasions within a week of each other. Both the over capacity and the number of infants in care are sufficiently egregious to support a temporary immediate suspension of her license. During her visits, Diaz observed that the Licensee was unable to appropriately care for the number of infants present.

The other violations cited, regarding hazards to the daycare children and inadequate sleeping facilities, would not, by themselves support immediate suspension. With the over capacity and out of ratio violations, however, the hazards confirm the Department's conclusion that an imminent risk of harm to the health, safety or rights of daycare children exists at the Licensee's daycare. Continuing the immediate suspension is appropriate.

The Licensee recognized the importance of following the rules to reopen her daycare. She listed the items that have been corrected since the closure of the daycare.²¹ The Licensee maintained that she believed that she had a "C" license, which allowed larger numbers of infants and toddlers with the use of a

²¹ Testimony of Licensee; Exhibits 18-38.

helper.²² The ALJ does not doubt the Licensee's sincerity, but her explanation does not account for her failure to immediately correct the over capacity and out of ratio violations between the October 25 and October 30 visits, when she was explicitly informed of the applicable limits. The seriousness of the violations has been demonstrated and an immediate suspension is warranted.

R. C. L.

²² Testimony of Licensee.